

Before the U.S. House of Representatives  
Committee on Transportation and Infrastructure  
Subcommittee on Highways and Transit

Hearing on  
“Curbside Operators”: Bus Safety and ADA Regulatory Compliance

Testimony

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## Introduction

Chairman Petri and members of the Committee, I am Peter J. Pantuso, President and Chief Executive Officer of the American Bus Association. The ABA is the trade association for the private over-the-road bus industry. The ABA is made up of over 3500 member organizations, including nearly 800 bus operator members. ABA members are engaged in providing all manner of travel, tour and transportation services to the public. Specifically, our bus operator members provide intercity scheduled service, charter and tour, airport shuttle and commuter services throughout the nation.

The private bus industry transports approximately 774 million passengers a year (more than the nation's airlines and Amtrak combined). The industry ABA represents is one largely made up of small businessmen and women. The average ABA member has fewer than eight motorcoaches in operation. We point out that we are a "mom and pop" industry, Dad drives and Mom is responsible for booking trips and for bookkeeping.

What brings us together today is a very real threat to that industry. Before detailing that threat may I first say Mr. Chairman, that the private bus industry and all who care about this nation's transportation needs owe you a debt, for your leadership in convening this hearing. The problem of unregulated and ill-policed motorcoaches providing intercity service between the major cities on the east coast, along the southern United States border and lately on the west coast, is one of growing concern. The ABA and its members have attempted for some time to get the attention of the responsible agencies of the United States Department of Transportation and the United States Department of Justice, with limited success. Hopefully, the attention that Congress can focus on this issue will help DOT bring resolution to this problem.

To begin, Mr. Chairman, I would like to define what ABA considers to be a so-called "curbside operator." These are motorcoach operators who boast of providing low cost service primarily between cities along the east coast. The offered service typically begins on street corners in Washington, D.C., Philadelphia, New York, Boston or Montreal. From these street corners they operate between the larger cities. These services are also offered along the U.S.- Mexican border. Typically, the curbside operators have no discernible maintenance facilities, no administrative or sales offices and seem to operate on a "shoestring". Also problematic is the fact that the bus drivers hired by these curbside operators often speak little, if any English.

The operators I describe are operating in defiance of federal and state law and nothing could be further from the truth than the assertion that they do so for the public good.

The curbside operators are not "David" fighting "Goliath." They are in fact, in violation of several important United States laws and regulations. These laws include the Americans with Disabilities Act (ADA), federal DOT safety regulations and federal environmental quality regulations. Finally, there are significant security concerns attached to these operators.

One final point. Some will cry that ABA member carriers are interested in this issue only because the competition offered by these curbside operators is too great to bear. I have two responses to that assertion. First, the competition offered by these carriers is not competition between equals but rather between carriers that obey the law against those that do not. No ABA member objects to competing on price or service but the laws and regulations under which we operate must be the same for all. As proof of this I offer the fact that when these curbside operators are forced to obey the law and operate within recognized terminals and facilities, ABA member companies compete quite successfully with them. Second, the bus operators represented by the ABA have outstanding safety records. In fact, DOT's data have consistently shown that bus transportation is the safest mode of transportation in the United States. However, these curbside operators are not safe, and when they operate their service deficiencies give the bus industry a bad name, force good operators into curtailing service, and make a mockery of our efforts to provide safe and efficient transportation to the nation. It is in all of our interests to get these so-called curbside operators to obey the law or get them off the road. But as I will now detail, getting these curbside operators to obey the law is a significant regulatory problem, which requires immediate attention.

#### **Americans with Disabilities Act and curbside operators.**

The enactment of the Americans with Disabilities Act (ADA) was a landmark step in ensuring passenger transportation for an underserved segment of American society. The DOT regulations implementing the over-the-road bus provisions of ADA requires that since October 2000, every over-the-road bus purchased by a Class I fixed route operator must be lift-equipped; smaller operators must purchase lift equipped buses or they must provide "equivalent service" in other lift equipped vehicles. As of October 2006, DOT regulations implementing the ADA require that 50% of the bus fleets of all scheduled service carriers must be equipped with wheelchair lifts.<sup>1</sup> These wheelchair lifts, which cost \$40,000 to install on each bus, allow disabled Americans to board buses safely. Of course, the installation of wheelchair lifts is only one component of the cost. According to the Transportation Research Board (TRB) the cost to the industry of installation, maintenance and training for wheelchair lifts is approximately \$40 million a year.

In addition, since 2000 DOT's ADA regulations require that bus operators provide lift-equipped bus service to passengers who request such service within 48 hours of the request; provide accessible service for disabled passengers who do not require a

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<sup>1</sup> The ADA regulations require that a bus operator with revenues of over \$5.3 million be required to have, as of October 2006, 50% of its fleet wheelchair lift accessible. According to news reports, curbside operators make an estimated \$2135 per bus trip per day. At that rate it would take each of the curbside operators (at least the operators on the Department of Transportation data base) some 2483 bus trips to reach the \$5.3 million threshold. Over the course of 365 days, a curbside operator would have to make 6.7 trips per day (three and one half round trips) to reach this threshold. According to news reports, the curbside operator Fung Wah makes eighteen trips per day. This is more than double the number of trips needed to push it into the \$5.3 million revenue class, which triggers the 50% requirement.

lift, such as hearing or sight-impaired passengers' provide adequate accessibility training for its employees; and report to DOT on the number of disabled passengers who use their lift-equipped service annually.

But the curbside operators have no wheelchair lifts on their motorcoaches. A circumstance that is clearly visible on every motorcoach. Even worse from a legal point of view, if you call these operators and tell them you require a wheelchair lift, they will tell you to call Greyhound Lines (Greyhound), Peter Pan Bus Lines (PPBL) or Adirondack Trailways (Adirondack) or other scheduled service carriers who they know do follow the ADA requirements, and have invested the time and money into obeying federal law, and ride with those carriers. Rather than obey the law and serve these citizens, the curbside operators would prefer to throw them to other carriers. Over the last year there has been a series of articles and news stories in the media about these operators. In many stories, the shortcomings of these carriers are detailed. Appended to my testimony are several such articles, including those which demonstrate these carriers' failure to serve disabled passengers.

Moreover, these curbside operators have discriminated against the disabled by refusing service to handicapped Americans who do not need wheelchair lifts. An article in the March 24, 2005 issue of the Boston Herald newspaper details the denial of service to a sightless couple by the curbside operator, Fung Wah. Even worse, the couple, which was accompanied by their guide dog, was first denied service because of the company's "no dog" policy. Then when the wife attempted to board without their guide dog, she was denied with the words "If you don't have the dog, who's going to guide you?" In my opinion, no more classic instance of "Catch 22" exists.

The Massachusetts Attorney General filed a complaint on behalf of the couple with the Massachusetts Commission Against Discrimination. The final word on this shameful incident must be given to Mary Sten-Clanton, who is one half of the couple denied service. "We want Fung Wah to change their ways." That sums up ABA's interest in this issue. But to see that the curbside operators change their ways, we need the help of the federal government and frankly, neither the Department of Justice nor the Department of Transportation has been able to deal effectively with this issue.

### **DOT's failure to enforce its anti-discrimination rules**

The United States Department of Transportation is responsible for "licensing" bus operators to provide interstate transportation in the nation. The Department inherited this duty from the former Interstate Commerce Commission (ICC) when that agency was

sunset by Congress in 1995.<sup>2</sup> This duty in turn was delegated to the Federal Motor Carrier Safety Administration (FMCSA) a modal administration of DOT.

ABA and its members are frustrated by the fact that FMCSA and DOT refuse to carry out those responsibilities by preventing curbside operators from beginning, or continuing, operations when they are flagrantly in violation of the Secretary's anti-discrimination regulations implementing the ADA.

By law FMCSA may grant a carrier authority to operate in interstate commerce only if the agency finds that the carrier is "fit, willing and able" to abide by the law and the applicable regulations of the Secretary of Transportation. 49 U.S.C. 13902(a), FMCSA is also authorized to revoke motor carrier operating authority for "willful failure" to comply with the Secretary's regulations. 49 U.S.C. 13905(c). In ABA's view, since these curbside operators are making a mockery of every aspect of the Secretary's ADA regulations, their applications for operating authority should be denied and their existing certificates of operating authority should be revoked. They have clearly shown themselves to be unfit, unwilling and unable to comply with the Secretary's ADA regulations.

Unfortunately, FMCSA does not agree. ABA members have complained to FMCSA and protested the granting of operating authority to these non-compliant carriers. Peter Pan Bus Lines (PPBL) specifically protested the application of curbside operator Fung Wah. A protest grounded on the applicant's lack of ADA required wheelchair lifts. FMCSA denied PPBL's protest. In sum, FMCSA ruled that the curbside operator's willingness and ability to comply with the Secretary's ADA regulations was not relevant to the agency's determination of fitness to operate. With all respect to the Department of Transportation, FMCSA's ruling is wrong on both legal and policy grounds.

Legally FMCSA appears to contend that "the applicable regulations of the Secretary" with which the agency must find a carrier willing to abide by only includes applicable regulations of the former ICC transferred to DOT under the Interstate Commerce Commission Termination Act of 1995 (ICCTA). As the ADA regulations were promulgated after ICCTA, in FMCSA's view, its fitness determination cannot include the applicant's non-compliance with ADA as a ground to deny a grant of operating authority.

ABA contends FMCSA's position is legally unsound. This is so because the passenger carrier regulations previously enforced by the ICC (49 CFR Part 374) specifically incorporates by reference the ADA and the Department's implementing regulations, which contains the Secretary's ADA regulations (See, 49 CFR 374.315). Therefore, the Secretary's ADA regulations were "applicable regulations of the Interstate Commerce Commission" and are now "applicable regulations of the Secretary" and must be a part of any carrier's fitness determination.

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<sup>2</sup> The former Interstate Commerce Commission (ICC) an independent regulatory agency of the United States government was abolished pursuant to the Interstate Commerce Commission Termination Act (ICCTA) (Pub. L. 104-88, 109 STAT. 803, 1995).

Quite apart from the legal argument, as a matter of public policy, FMCSA's stance makes no sense. The agency in effect argues that the Secretary of Transportation cannot use the Secretary of Transportation's own regulations to inform a carrier's "fitness" for operating authority. While the enforcement of the ADA's wheelchair lift requirement is committed to the Department of Justice<sup>3</sup>, nothing in law or policy prevents the FMCSA from denying an applicant operating authority on account of that applicant's failure to comply with the ADA. Indeed, the law requires FMCSA to withhold operating authority from a carrier, which has demonstrated that it is unfit, unwilling or unable to comply with the applicable regulations of the Secretary. 49 U.S.C. 13902(a)(3). Even worse, DOT's argument prohibits the agency from taking action against a carrier whose operation violates a law enforced by another agency.

Just how nonsensical FMCSA's stance truly is may be seen in the following example. 49 CFR Part 374, the DOT regulations which contain the ADA requirement also includes the prohibition against a carrier operating in interstate commerce any service in which seating is determined by the race of the passengers (see, Part 374.101). Logically, an application for operating authority concerning race should meet the same fate as one in which the ADA compliance is an issue. Yet is there any doubt that any application with such an infirmity would be summarily dismissed by the FMCSA? The answer, I submit, is obvious and so should be any decision regarding an ADA non-compliant carrier.

## **SAFETY**

The FMCSA also has the duty of enforcing regulations of the Secretary of Transportation with regard to motor carrier safety.

The curbside operators as a class have a litany of safety deficiencies. News reports, police accident reports and passenger complaints all present the picture that these curbside operators lack the proper equipment, trained drivers and the necessary safety protocols. Even more problematic, some of these operators do not have any operating authority. For example, Dragon Coach, which operates between New York City and Albany, New York, has, as of February 17, 2006, no authority to operate and has no application for operating authority pending with the federal government. Another such carrier, Eastern Travel and Tour, also has no active authority on file with FMCSA and no application pending, and has no evidence of liability insurance on file with the agency

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<sup>3</sup> In a letter to Congressman John Olver dated February 10, 2006 (copy attached) Transportation Secretary Mineta acknowledged that DOT has not denied any applications for operating authority on the grounds of non-compliance with DOT's ADA regulations and has not revoked any operating authority on those grounds. He cited the Department of Justice's role as the enforcer of the ADA bus accessibility requirements and stated that DOT "continues to work closely with the Department of Justice in facilitating that enforcement." The Secretary also states that DOT has shared with DOJ evidence of prosecutable carrier violations. For its part, according to a November, 2005 news report, DOJ says it has begun two investigations into whether discount carriers are complying with the ADA. While ABA certainly supports any investigation into this matter, the fact is that we have received no notification of any investigation nor have we been asked to aid in any investigation.

(interstate carriers of passengers are required to have \$5 million of insurance on file with the FMCSA at the time it begins operations). Finally, Dong Shun Travel Bus Corporation, which has a business address in Newport News, Virginia, and a mailing address in New York City, likewise has no authority on file, no application pending and no insurance on file.

Under its regulatory authority FMCSA has initiated some enforcement actions against the curbside operators. For this the ABA and its members are grateful. Some measure of the scope of the FMCSA's problem with curbside operators may be gleaned from the fact that one inspection "sweep" of 400 curbside operators' buses turned up more than 500 safety-related violations. Following this inspection FMCSA ordered 56 buses and 13 drivers out of service. (A detailed newspaper account of this enforcement action is appended to my testimony).

But while ABA appreciates these actions by the FMCSA, they, in fact, mean little as long as these curbside operators are allowed authority to operate. This is so because these carriers openly and notoriously change their names, state registrations and addresses to continue operations even after the federal regulatory agency has ordered them to shut down their unsafe operations.

The ephemeral nature of these carriers' business or operational addresses raises several other issues. First, it encourages the practice of evading regulatory agency detection by re-registering its equipment and operations under a different corporate name in a different state. ABA members have seen these operators in buses in which the old company "logo" can be seen through the hurried paint job used to conceal it. Second, the use of "dummy" corporate addresses for insurance filings (for example, establishing a "dummy" address in Massachusetts to take advantage of cheaper insurance costs while your operations are largely in New York) allows such carriers the means to evade their financial responsibilities.

The failure of the curbside operators to use bus terminal facilities available in various states also points up a loss, not to the competing carriers but to the states and cities that have such terminals. For instance, one-third of every dollar ABA member PPBL generates as revenue on its Boston-NYC schedule goes to docking and terminal rental fees at Boston's South Street Station and NYC's Port Authority Bus Terminal. The failure of curbside operators to use these terminals deprives the cities that own the terminals of revenue needed for their operation as well as depriving waiting passengers of some modicum of comfort. Moreover, the non-use by curbside operators of these terminals certainly impedes any regulatory agency's efforts to find the carriers and inspect them and their operations.<sup>4</sup>

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<sup>4</sup> The Recently passed SAFETEA-LU (Pub. L. 109-59, 119 STAT. 1144 (2005)) prevents roadside inspection of buses unless the bus presents an "imminent hazard." In ABA's view, this new law makes it mandatory that these curbside operators have some facility at which they may be inspected by regulatory agencies.

But it is when the curbside operators meet the traveling public where the safety failures of these operators are most notable. I have already addressed the lack of wheelchair lifts on these vehicles. A similar issue is the lack of maintenance facilities where the regulatory agencies can check an operator's maintenance logs and drivers' hours of service logbooks. The issue of a driver exceeding his or her hours of service is one the FMCSA takes very seriously but it is difficult to police the logbooks if you can't find them. Another issue concerns adequate facilities and records for the mandated drug and alcohol testing of drivers.

A similar issue is the lack of Commercial Drivers Licenses (CDL) by curbside operator drivers. A driver's ability to maintain a CDL requires the operator to test its drivers periodically. Also tested is the driver's ability to read, understand and communicate in emergency situations. Also, as the news articles appended to my testimony demonstrate, curbside operator drivers have failed to appropriately respond in such situations.

One issue that has surfaced is the lack of English spoken by curbside operators' drivers. ABA members and operators have seen the lack of English speaking ability when we ask these operators for a wheelchair lift. We also see it when curbside operators' drivers find themselves in emergency situations. Again, newspaper accounts speak of drivers' inability to make themselves understood to passengers in emergencies, of the drivers' failure to understand passengers' warnings of danger or of the drivers' failure to aid the passengers in an emergency.

Even newspaper columnists who incorrectly glorify these operators themselves provide testimony to the drivers' lack of training. One column (Washington Post, Mark Fisher, May 3, 2005, copy attached) detailed the driver deliberately ignoring the EZ Pass regulations on U.S. highway 95; allowing his pet dog to run the aisle of the motorcoach during operation; and driving up and over an embankment to avoid traffic.

All of this evidence is not just anecdotal. ABA has done an analysis of FMCSA's SAFESTAT figures. SAFESTAT is the means by which FMCSA tests the safety ratings of motor carriers. ABA staff selected ten carriers we knew to be curbside operators and reviewed the safety data of each. Of the ten, three had safety ratings of 71 or higher, six were coded as having "insufficient data" on which to base any rating and one, while having an overall satisfactory safety rating had a driver safety rating of 72.98. It is important to note that the higher the safety rating number, the lower the actual safety level of the carrier. Thus, a carrier with a rating of 100 would have the lowest possible safety rating. Even with this small sample, it is fair to say that the curbside operators as a class have a lower safety rating than other scheduled service operators. Certainly, the curbside operators safety ratings are significantly lower than the ABA members with which they compete.



## **Environmental Issues.**

The provision of clean air and water are national priorities. It should come as no surprise that the curbside operators have shown themselves to be on the wrong end of this national priority. Motorcoaches are bound to dispose of their wastewater toilets tanks in an environmentally approved fashion. Federal law provides for the safe disposal of the tanks' contents in only approved facilities.

However, curbside operators without any maintenance facilities cannot be adequately tested for compliance with environmental laws. Indeed, one curbside operator in Norfolk, Virginia was videotaped by a private citizen dumping his bus tanks in a city storm drain. Dumping tanks in this manner is a clear violation of the law. But once again, the lack of any facility or terminal for curbside operators makes enforcement of the law difficult at best.

## **Security**

In the wake of the attacks on the United States on 9/11, bus security is a pressing issue. Lack of enforcement of the curbside operators can call our efforts to protect the nation's transportation system into question. Since 9/11 ABA members, with help from a small aid program administered by the Department of Homeland Security, has strived to improve the security of our equipment, personnel and passengers.

ABA members have expended these funds as well as their own money to purchase: digital cameras for their motorcoaches, maintenance facilities and staging areas; cell phones and enhanced communications between dispatch and emergency first responders; increased "wandering" of passengers at the larger terminals; and protection for drivers from attack.

In so far as we can determine, the curbside operators have not taken any of these steps. But it goes beyond failure to protect their passengers. With a lack of facilities and training how can they ensure that their equipment is safe from theft and the use by those who want to harm others? With a lack of drivers properly trained and certified, how can they ensure that the drivers are safe? How can we be sure of anything with respect to these curbside operators if we can't find them, can't inspect them and won't deny the worst of them authority to operate.

## **Conclusion**

The ABA's view of the bus operations is consistent and very simple. The law should apply to all. Our members and all legitimate operators are happy to compete with anyone as long as the same rules apply to all. ABA believes that denying authority to carriers who cannot abide by the FMCSA's safety regulations, the ADA, and the federal clean water laws and who cannot operate safe drivers and equipment is the only way to ensure the safety of the nation's highway system.

In this ABA agrees with FMCSA Administrator Sandberg who, on several occasions has stated her view that “my concerns are with operators who operate on or outside the margins...Whenever somebody is operating on a very low margin...the first thing they cut is safety...whether it’s safety management or maintaining the equipment or making sure they are doing drug or alcohol testing on their drivers...or carrying the proper levels of insurance.”<sup>5</sup>

In all I have said it is clear that these operators operate on the margins as well as outside the law. Congress should insist that FMCSA and the Department of Transportation use all the tools they have to stop unsafe carriers from gaining operating authority and prevent them from ignoring the law once they have operating authority.

Thank you, Mr. Chairman and members of the Committee. I will be happy to answer any questions the Committee has for me.

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<sup>5</sup> Washington Post. COM, “Some Low-Fare “Chinatown” Buses told to Halt over Safety” Bill Brubaker, Wednesday, November 23, 2005, Page. A1.